

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Improving Public Safety Communications in the |) | |
| 800 MHz Band |) | WT Docket No. 02-55 |
| |) | |
| Consolidating the 800 and 900 MHz |) | |
| Industrial/Land Transportation and Business Pool |) | |
| Channels |) | |
| |) | ET Docket No. 00-258 |
| Amendment of Part 2 of the Commission's Rules |) | |
| to Allocate Spectrum Below 3 GHz for Mobile |) | |
| and Fixed Services to Support the Introduction of |) | |
| New Advanced Wireless Services, including Third |) | RM-9498 |
| Generation Wireless Systems |) | |
| |) | |
| Petition for Rule Making of the Wireless |) | |
| Information Networks Forum Concerning the |) | RM-10024 |
| Unlicensed Personal Communications Service |) | |
| |) | |
| Petition for Rule Making of UT Starcom, Inc., |) | |
| Concerning the Unlicensed Personal |) | ET Docket No. 95-18 |
| Communications Service |) | |
| |) | |
| Amendment of Section 2.106 of the Commission's |) | |
| Rules to Allocate Spectrum at 2 GHz for use by |) | |
| the Mobile Satellite Service |) | |

**COMMENTS OF TMI AND TERRESTAR ON NEXTEL BAS RELOCATION
AND IMPLEMENTATION PLAN**

VINSON & ELKINS LLP

Gregory C. Staple
R. Edward Price
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

May 6, 2005

Summary

These Comments are submitted on behalf of TMI Communications and Company, Limited Partnership (“TMI”) and its affiliate, TerreStar Networks Inc. (“TerreStar”), in response to the “BAS Relocation Schedule and Implementation Plan” filed by Nextel Communications, Inc. (“Nextel”) on April 6, 2005 regarding the 1990-2025 MHz band.

While Nextel’s filing attempts to flesh out the two-stage band clearance plan adopted in the *R&O* by listing the TV markets scheduled for relocation during each stage, the level of information provided is inadequate in several crucial respects. First, Nextel’s plan does not identify any current BAS facilities to be relocated (e.g., the number and type of BAS stations by TV market and licensee), even though Nextel concedes that it has “created a detailed database that lists all BAS licensees in each market.”

Second, Nextel’s plan does not provide any firm dates, by market, for completing the relocation process. Nor does the plan provide for the timely disclosure of relevant information regarding Nextel’s progress in clearing any given BAS facility during Stage 1 or Stage 2 as measured, for example, by Nextel’s own nine-step process. Third, Nextel’s current relocation plan is deficient because it does not provide for the timely disclosure of relevant financial information. Such data is of particular concern to TMI if it is required to bear a pro rata share of Nextel’s BAS relocation costs.

To remedy these and related informational deficits in Nextel’s relocation plan and to ensure better coordination between Nextel and 2 GHz MSS licensees, the Commission should promptly direct Nextel to share its BAS station database, through the completion of Stage 2, with any authorized 2 GHz MSS grantee, subject to appropriate confidentiality provisions. In addition, within 45 days, Nextel should be required to augment its plan by disclosing the target

dates for concluding an initial Frequency Relocation Agreement (FRA) and for completing relocation in each market.

Beginning in October 2005, Nextel also should be directed to provide the FCC and 2 GHz licensees with quarterly market-by-market reports that adequately detail Nextel's progress, per its nine-step process, in relocating BAS facilities. To remedy the financial deficits in Nextel's plan, Nextel's quarterly reports should detail Nextel's relocation costs by market and type of BAS facilities relocated. The reports should contain a relevant breakdown of Nextel's expenses as well (e.g., equipment and labor costs).

TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| I. INTRODUCTION..... | 2 |
| II. DISCUSSION | 4 |
| A. The MSS-BAS Relocation Plan | 5 |
| B. The Nextel-BAS Relocation Plan..... | 6 |
| C. The Imperative for Close Coordination of the Nextel and MSS-BAS Relocation Efforts | 7 |
| D. Shortcomings of Nextel’s Current Relocation Plan and Proposed Remedies | 9 |
| 1. Absence of Firm Relocation Dates..... | 9 |
| 2. No Details on BAS Stations Subject to Relocation..... | 10 |
| 3. Lack of Adequate Financial Data | 12 |
| III. CONCLUSION | 13 |

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|---|---|----------------------|
| In the Matter of |) | |
| |) | |
| Improving Public Safety Communications in the |) | |
| 800 MHz Band |) | WT Docket No. 02-55 |
| |) | |
| Consolidating the 800 and 900 MHz |) | |
| Industrial/Land Transportation and Business Pool |) | |
| Channels |) | |
| |) | ET Docket No. 00-258 |
| Amendment of Part 2 of the Commission's Rules |) | |
| to Allocate Spectrum Below 3 GHz for Mobile |) | |
| and Fixed Services to Support the Introduction of |) | |
| New Advanced Wireless Services, including Third |) | RM-9498 |
| Generation Wireless Systems |) | |
| |) | |
| Petition for Rule Making of the Wireless |) | |
| Information Networks Forum Concerning the |) | RM-10024 |
| Unlicensed Personal Communications Service |) | |
| |) | |
| Petition for Rule Making of UT Starcom, Inc., |) | |
| Concerning the Unlicensed Personal |) | ET Docket No. 95-18 |
| Communications Service |) | |
| |) | |
| Amendment of Section 2.106 of the Commission's |) | |
| Rules to Allocate Spectrum at 2 GHz for use by |) | |
| the Mobile Satellite Service |) | |

**COMMENTS OF TMI AND TERRESTAR ON NEXTEL BAS RELOCATION
AND IMPLEMENTATION PLAN**

These Comments are submitted on behalf of TMI Communications and Company, Limited Partnership ("TMI") and its affiliate, TerreStar Networks Inc. ("TerreStar"), in response to the "BAS Relocation Schedule and Implementation Plan" filed by Nextel Communications, Inc. ("Nextel") on April 6, 2005 regarding the 1990-2025 MHz band. Because the current Broadcast Auxiliary Service ("BAS") band overlaps the 2 GHz Mobile Satellite Service ("MSS")

band in which TMI is authorized to operate (2000-2020 MHz),¹ both TMI and TerreStar, the pending assignee of TMI's authorization, have a direct interest in the particulars of Nextel's relocation plan. The *Report and Order (R&O)*² in this proceeding also expressly grants 2 GHz MSS licensees, such as TMI, 30 days to comment on Nextel's BAS relocation plans.³

I. INTRODUCTION

While Nextel's filing attempts to flesh out the two-stage band clearance plan adopted in the *R&O* by listing the TV markets scheduled for relocation during each stage, the level of information provided is inadequate in several crucial respects. First, Nextel's plan does not identify any current BAS facilities to be relocated (e.g., the number and type of BAS stations by TV market and licensee), even though Nextel concedes that it has "created a detailed database that lists all BAS licensees in each market."⁴

Second, Nextel's plan does not provide any firm dates, by market, for completing the relocation process. Nor does the plan provide for the timely disclosure of relevant information regarding Nextel's progress in clearing any given BAS facility during Stage 1 or Stage 2 as measured, for example, by Nextel's own nine-step process. These steps include several key milestones such as the conclusion of a Frequency Relocation Agreement ("FRA"), conversion to

¹ See, e.g., *TMI Communications and Company, Limited Partnership*, 19 FCC Rcd 12603 (2004).

² See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial Land Transportation and Business Pool Channels, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15099, ¶ 257 (2004) ("R&O").

³ Although the *R&O* (at ¶257) anticipates that MSS licensees would comment in order to identify those top 30 TV markets and fixed BAS operations they wish to relocate involuntarily (e.g., because Nextel's plan does not accord such facilities priority), the *R&O* does not preclude an MSS licensee from commenting on other relevant matters. In any event, to the extent necessary, TMI hereby requests that the Commission waive any limitation on the scope of such comments because the purpose of the comments -- to coordinate the BAS relocation and facilitate MSS market entry -- would be better served. Moreover, as discussed herein, Nextel's current plan does not provide TMI sufficient information to specify the scope of any involuntary relocations it might wish to make. If necessary, TMI also requests that these Comments be treated as an informal or *ex parte* submission pursuant to Section 1.41 and 1.200 of the Commission's rules.

⁴ Nextel BAS Relocation Schedule and Implementation Plan, April 6, 2005, at 6.

new equipment and completion of equipment testing.⁵ Because TMI may initiate its own band clearance activities as early as 2006 (well prior to satellite launch and service tests), current market-by-market and facility-by-facility information on the status of Nextel's relocation program will be essential to avoid duplication of effort and to ensure that TMI's own market entry stays on schedule. In addition, without access to detailed BAS relocation data, TMI cannot identify those top 30 markets or fixed BAS facilities where it may wish to exercise its involuntary relocation rights.

Third, Nextel's current relocation plan is deficient because it does not provide for the timely disclosure of relevant financial information. Such data is of particular concern to TMI if it is required to bear a pro rata share of Nextel's BAS relocation costs.⁶

To remedy these and related informational deficits in Nextel's relocation plan and to ensure better coordination between Nextel and 2 GHz MSS licensees, the Commission should direct Nextel to share its BAS station database, through the completion of Stage 2, with any authorized 2 GHz MSS grantee, subject to appropriate confidentiality provisions. Given that the operational status and channel utilization of BAS facilities in over 200 TV markets will be in a state of considerable flux during the BAS relocation period, and the lags common in updating the FCC's universal licensing system ("ULS") database, the information gathered by Nextel through

⁵ Nextel's nine-step process for clearing any given BAS facility is detailed on the company's 2 GHz band relocation website. See <http://www.2ghzrelocation.com/plugin/template/broadcastl/market%20transition%20lifecycle/>.

⁶ The R&O (at ¶ 261) currently requires 2 GHz MSS licensees to make a pro rata contribution to Nextel's BAS relocation costs if they enter the market before the end of the 36 month 800 MHz band reconfiguration period which is now set to begin on June 27, 2005. See *Public Notice*, "Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth In the Transition Administrator's 900 MHz Regional Prioritization Plan," DA 05-619, released March 11, 2005. However, TMI and TerreStar have asked the FCC to sunset this potential contribution period, at latest, 36 months from the effective date of the R&O or January 21, 2008. See TMI and TerreStar "Joint Request for Clarification", WT Docket No. 02-55, December 21, 2004, and "Reply to Nextel Opposition," May 2, 2005.

its ongoing negotiations and band clearance work with BAS licensees will be the most comprehensive and up-to-date source of BAS station data available.⁷

In addition, within 45 days, Nextel should be required to augment its plan by disclosing the target dates for concluding an FRA and for completing relocation in each market. Beginning in October 2005, Nextel also should be directed to provide the FCC and 2 GHz licensees with quarterly market-by-market reports that adequately detail Nextel's progress, per its nine-step process, in relocating BAS facilities. To remedy the financial deficits in Nextel's plan, Nextel's quarterly reports should also detail Nextel's relocation costs by market and type of BAS facilities relocated. The reports should contain a relevant breakdown of Nextel's expenses as well (e.g., equipment and labor costs).

Timely reports on Nextel's progress in relocating BAS stations, together with adequate financial data, is essential for TMI to make informed decisions about the scope of BAS facilities it may wish to relocate and to monitor the potential contributions it may be required to make to Nextel. The *R&O* (at ¶350) already requires Nextel to keep accurate records regarding expenses incurred in clearing the BAS band and provides for an independent audit of such expenses. Requiring Nextel to disclose these expenses quarterly to the FCC and 2 GHz licensees would not be unduly burdensome.

II. DISCUSSION

To understand better the public interest rationale for closing the information gaps in Nextel's plan, it may be helpful briefly to review the respective BAS relocation obligations of 2 GHz MSS licensees and Nextel.

⁷ For example, as a precondition to concluding a Frequency Relocation Agreement ("FRA"), which establishes the financial terms for relocation, Nextel is requesting BAS licensees to complete an extensive 2 GHz Relocation Inventory Guidance Sheet. This Nextel form seeks much broader information than that recorded in the FCC's ULS. The Inventory Guidance Sheet is posted at <http://www.2ghzrelocation.com/plugin/template/broadcast/>.

A. The MSS-BAS Relocation Plan

The Commission established an initial plan for the relocation of BAS licensees by MSS entrants in 2000⁸ and then substantially modified these arrangements in 2003.⁹ Under the 2003 plan, prior to initiating service, the first MSS entrant must relocate all BAS incumbents in markets 1-30 and all BAS “fixed stations” (regardless of market size).¹⁰ Incumbents are to be relocated to the new BAS band which comprises seven 12 MHz channels from 2025-2110 MHz. Thereafter, once the relocation of these facilities is completed and the initial MSS entrant begins service, the 2003 rules require all other BAS licensees in markets 31-210 to “immediately cease operations” in the MSS band (i.e., on BAS channels 1 and 2).¹¹ The plan then affords an MSS entrant up to three years to relocate BAS incumbents in markets 31-100 and five years for incumbents in markets 101-210.

In adopting this plan, the Commission suggested that, based on an April 2003 review of the ULS database, an initial MSS entrant might face a potential relocation burden involving 455 fixed BAS stations operating on channels 1 and 2, plus 44 other co-channel fixed facilities.¹²

⁸ See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Services*, ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd 12315 (2000) (*2 GHz MSS Second Report and Order*).

⁹ See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, ET Docket No. 95-18, *Third Report and Third Memorandum Report and Order*, 18 FCC Rcd 23638 (2003) (*2 GHz MSS Third Report and Order*).

¹⁰ *Id.* ¶¶ 62-63. Under Section 74.601 of the FCC’s Rules, 47 C.F.R. § 74.601, the following classes of BAS facilities are considered “fixed”: a TV STL (studio transmitter link); a TV relay station, sometimes referred to as an intercity relay (used for the point-to-point transmission of TV program material to a full service or low power TV station); a TV translator relay station (used for relaying programs to various TV stations; and TV microwave booster stations (used for receiving and amplifying the signals of other BAS fixed and mobile stations such as TV pick up station -- a mobile BAS station used for onsite electronic news gathering (ENG). Fixed stations are typically licensed for a discrete BAS channel whereas mobile BAS facilities are generally licensed from band edge to band edge (i.e., for any BAS channel). See generally *2 GHz MSS Third Report and Order*, ¶ 13. Certain other fixed facilities may also be licensed to operate on a primary basis in the BAS spectrum. These include common carrier point-to-point microwave stations in the local television transmission service (LTTS), TV microwave booster and aural intercity relay links. All of these facilities are considered to be fixed BAS stations and are subject to relocation nationwide by the initial MSS entrant at the same time as markets 1-30 are relocated.

¹¹ *2 GHz MSS Third Report and Order*, ¶ 63.

¹² See *id.* Appendix D.

The FCC's ULS compilation also disclosed over 3,800 potentially interfering BAS mobile stations, which are licensed to operate across all available BAS channels.¹³ Market-by-market data on BAS mobile stations was not reported.

B. The Nextel-BAS Relocation Plan

Seven months after endorsing this revised MSS-BAS relocation plan, the FCC changed course and adopted a third BAS relocation plan as part of its omnibus 800 MHz band reconfiguration order. At Nextel's request, the Commission granted Nextel 5 MHz of replacement spectrum in the lower end of the BAS band (1990-1995 MHz), provided Nextel agreed to clear all incumbent BAS facilities nationwide and bear the up-front costs of so doing. More precisely, pursuant to the *R&O*, Nextel is to relocate incumbent BAS licensees in two stages, the first lasting 19.5 months (until September 7, 2006) from the effective date of the *R&O*, and the second lasting 31.5 months (until September 7, 2007).¹⁴ In Stage 1, Nextel may select the markets it wishes to relocate based on its own service priorities, whether or not they are in the top 30 and subject to mandatory relocation by an MSS entrant. Nextel must clear all BAS markets (including the top 30), however, by the end of Stage 2. But again, the *R&O* leaves it up to Nextel to choose when it will clear any given market within Stage 2.

Despite authorizing Nextel to take the lead in relocating BAS facilities, the Commission left its prior MSS-BAS plan in effect with one major exception. In response to objections from the broadcast community and with the support of Nextel, the FCC decided that even after relocation of BAS facilities in markets 1-30 is complete, it would no longer require BAS licensees in the remaining markets 31-210 to cease operations on channels 1 and 2. Rather,

¹³ *Id.*

¹⁴ *R&O*, ¶269. The dates for completing Stages 1 and 2, originally to end 18 and 30 months, respectively, after the effective date of the *R&O* (at ¶ 251), were later extended for 45 days. See *Public Notice*, "Commission Seeks Deadline Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd 21492 (2004). The *R&O* became effective on January 21, 2005, 60 days after Federal Register publication, which occurred on November 22, 2004. See 69 Fed. Reg. 67823 (November 22, 2004).

existing licensees using these channels could continue to do so “until they have been relocated to their fixed channel plan” or they indicate that they do not want to be relocated.¹⁵ This change to the 2 GHz MSS-BAS relocation plan poses a significant additional interference threat (and corresponding informational burden) for any MSS party seeking to enter the market before Nextel completes the last phase of its own relocation plan.

C. The Imperative for Close Coordination of the Nextel and MSS-BAS Relocation Efforts

In July 2004, when the FCC adopted the staged Nextel-BAS relocation plan, the prospective in-service and launch dates for most 2 GHz licensees were still three years away. Adequate time, therefore, appeared to exist for Nextel to complete both stages of its relocation plan (then scheduled to last only 2-1/2 years until approximately January 2007) well before most 2 GHz MSS licensees were due to commence service. Thus, unless an MSS licensee decided to begin service well ahead of schedule, it would not need to exercise its own band clearance rights and consequently only limited oversight of Nextel’s relocation efforts might be required. However, since then, due to changes in the FCC rules applicable to Nextel and MSS, the six month window between the end of Nextel’s BAS relocation plan and the estimated start of 2 GHz MSS operations has closed. As a result, to protect its interests, TMI needs to be able to participate in the BAS relocation process well before the end of Stage 2.

First, the end date for Nextel’s relocation plan has been pushed back considerably to at least September 2007, and quite possibly later. Although the *R&O* was adopted in July 2004, Nextel’s relocation clock did not start to run until the *R&O* became effective on January 21, 2005. In the interim, as noted, the FCC added 45 days to each relocation stage so that Stage 2 now ends on September 7, 2007 -- only two months before TMI’s launch milestone. And a close

¹⁵ *R&O*, ¶ 269.

review of Nextel's relocation plan suggests there is a risk, notwithstanding the timetable adopted by the FCC, that the Stage 2 process could extend beyond September 2007.

Second, and perhaps most tellingly, Nextel's plan is back-loaded. Approximately 140 out of 210 markets are targeted for Stage 2, including Los Angeles, the most heavily used BAS market,¹⁶ and 18 of the other top 30 TV markets. This plan will place extraordinary demands on Nextel to complete Stage 2 relocation on schedule given that key steps in the relocation process (e.g., the manufacture, installation and testing of new BAS equipment) are acknowledged to be largely beyond Nextel's control.¹⁷

Third, Nextel continues to support the broadcast industry's request to push back the dates for completing mandatory negotiation regarding BAS relocation.¹⁸ With Nextel's support, the broadcasters have asked that the deadline for Stage 1 negotiations be changed from July 15, 2005 to March 21, 2006, and that the deadline for Stage 2 mandatory negotiations be pushed back almost a full year until March 21, 2007.¹⁹ If this request is granted, Nextel and many BAS licensees may not even conclude an FRA in Stage 2 markets until less than six months before BAS facilities in these markets must be relocated -- a situation that would make it difficult for Nextel to complete Stage 2 on schedule.

At the same time as the timetable for the Nextel-BAS relocation plan was being pushed back, FCC rule changes regarding MSS were accelerating the need of TMI and other 2 GHz licensees for early clearance of the BAS bands. For example, in February 2005, to facilitate the

¹⁶ See, e.g., *2GHz MSS Second Report and Order*, ¶19.

¹⁷ See the discussion of Nextel's nine-step process at <http://www.2ghzrelocation.com>.

¹⁸ See "Comments of Nextel Communication Inc. and Nextel Partners, Inc.," WT Docket No. 02-55, (December 2, 2004) at 11-12. Nextel reaffirmed its support for the broadcaster's positions on April 21, 2005. See Ex Parte Letter from James B. Goldstein, Senior Attorney, Government Affairs, Nextel, to Marlene M. Dortch, Secretary, FCC, WT Docket No. 02-00 (April 21, 2005).

¹⁹ See Ex Parte Letter from Lawrence A. Walke, NAB, David Donovan, MSTV and Christopher Turlay, Counsel for SBE to Marlene H. Dortch, Secretary, FCC, WT Docket No. 07-55, (December 2, 2004).

construction of an integrated space/terrestrial network for MSS, the FCC confirmed its revised rules for a licensee's Ancillary Terrestrial Component ("ATC"). Under these rules, among other things, an MSS licensee can be granted ATC authority that is subject to first meeting its satellite based service or "gating" requirements, thereby enabling a licensee to offer an integrated satellite/terrestrial service shortly after its full system is operational.²⁰ TMI plans to file a request with the Commission for ATC authority under these new rules. Grant of ATC authority will significantly increase the demand for TMI's dual function (satellite/terrestrial) handsets as soon as service is turned up. All of these handsets must uplink communication in the BAS band. Accordingly, the advanced clearance of interfering BAS facilities is now of greater importance than ever for potential MSS consumers.

In sum, it is now clear that any delay in Nextel's Stage 2 plans will have a significant adverse impact on TMI and prospective users of 2 GHz MSS networks. A detailed knowledge and understanding of Nextel's BAS relocation plan is therefore essential to 2 GHz MSS licensees so that they can closely coordinate and harmonize their own BAS relocation plans with those of Nextel. As filed, however, the information contained in Nextel's relocation plan falls well short of what is required to develop a cooperative Nextel-MSS relocation effort for the BAS.

D. Shortcomings of Nextel's Current Relocation Plan and Proposed Remedies

1. Absence of Firm Relocation Dates

Nextel told the FCC in May 2004 that its BAS relocation plan would address the "[t]iming of individual market relocation within the two stage plan."²¹ Yet, as filed, the plan merely provides an alphabetical listing of the markets to be relocated during each stage. No

²⁰ See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the C-Bands and the 1.6/2.4 GHz Bands*, IB Docket No. 01-185, *Memorandum Opinion and Order and Second Order on Reconsideration*, FCC 05-30, released February 25, 2005, ¶¶ 86-87.

²¹ See Association for Maximum Service Television, Inc., National Association of Broadcasters and Nextel, "Joint Proposed BAS Relocation Plan," WT Docket No. 02-55, May 3, 2004, at 3.

dates are provided for the beginning and end of relocation in any market.²² It also bears repeating that Nextel has elected not to clear almost two-thirds of the top TV markets (19 of 30) until sometime in Stage 2 (September 2006 to September 2007). During this stage, Nextel has also elected to relocate BAS facilities in over 120 other markets. This back-loaded and, as yet, indefinite relocation schedule provides a warning signal and plainly underscores the need for Nextel to provide additional details on each stage of its plan now (i.e., within 45 days) and to file regular progress reports going forward, beginning in October 2005.

Under the FCC's current reporting schedule, Nextel will file but one progress report during Stage 1 (in mid March 2006, after 12 months) with the next report not due until March 2007. This is plainly inadequate for a timely evaluation of whether Stage 1 has been completed. The single 2007 report is likewise inadequate because it is now due before expiration of the requested mandatory negotiation period for Stage 2 markets. That is why TMI believes that much more frequent (and detailed) quarterly reports, such as those now mandated for the 800 MHz band Transitional Administrator ("TA"), are required if Nextel's relocation activities are to be adequately monitored.

2. No Details on BAS Stations Subject to Relocation

Second, Nextel's plan does not disclose the number and class of BAS facilities to be relocated in each market. Yet, Nextel acknowledges that it has worked "closely with NAB, MSTV, SBE, and other broadcast industry representatives to design its relocation plan" and to create "a detailed database that lists all BAS licensees in each market."²³ As such, no other

²² Nextel's 2 GHz relocation website does contain a "Market Kickoff Schedule" listing dates for most markets through September 2006. However, the Schedule states that the "kickoff" dates are "subject to change" and a "station should not take any action based solely on this information." *See* <http://www.2ghzrelocation.com/plugin/template/broadcast1538/506>. In any case, a market kickoff meeting is only the second step of Nextel's nine-step clearance process which, according to Nextel, cannot formally begin until a Frequency Relocation Agreement is signed.

²³ Nextel Plan at 6.

database is likely to be as up-to-date or complete²⁴ and Nextel should be required to maintain and share this database with 2 GHz MSS licensees through the end of Stage 2, subject to appropriate confidentiality provisions.

The inadequacy of alternative data sources is illustrated by prior FCC filings on this subject. For example, in 2003, when the FCC adopted its amended MSS-BAS relocation plan, it reported a total of 2,219 fixed BAS facilities with 499 stations operating on channels 1 and 2. As noted, these totals were reportedly derived from the FCC's ULS. Yet, an independent survey by the broadcast industry's Ad Hoc 2 GHz Reallocation Committee completed the same year (September 2003) found far fewer fixed links. And that Committee's own examination of the FCC's ULS disclosed only 1,150 fixed links in three key classes nationwide, whereas the FCC's own count for the same classes was almost 1,600.²⁵ These discrepancies cannot be resolved, let alone avoided in the future -- especially given the tens or even hundreds of monthly data changes that can be expected during the 2005-2007 relocation period -- unless MSS licensees have ready access to Nextel's BAS database as well as to the ULS.

The FCC last reviewed the adequacy of the BAS data available to MSS licensees in 2000 when it adopted the initial MSS-BAS relocation plan. At that time, the FCC decided not to require BAS licensees to provide additional technical, operational and equipment data to facilitate BAS relocation, reasoning "that the relocation negotiation process is the appropriate forum to seek any information which is not currently available through the Commission or

²⁴ See also note 7 *supra*.

²⁵ Compare "Ad Hoc 2 MHz Reallocation Committee 2003 2 GHz BAS Census and Digital Conversion Cost Estimate" (appended to Ex Parte Letter from Lawrence A. Walke, NAB, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 95-18, IB Docket No. 01-185, October 31, 2003), with *2 GHz MSS Third Report and Order*, Appendix D.

industry sources.”²⁶ By this logic, however, the Commission should reach exactly the opposite conclusion today.

In 2004, Nextel agreed to expedite the clearance of the BAS band by taking the lead in negotiating with BAS operators in most markets and paying the up-front BAS relocation costs. As a result of these negotiations, it is Nextel, not the MSS licensees, that will become privy to the comprehensive BAS data that is required to implement a viable relocation plan. This is already evidenced, for example, by Nextel’s pro-active requests to BAS licensees to complete Nextel’s 2 GHz Relocation Inventory Guidance Sheet. Nextel should be required to share access to the data it is collecting so that MSS licensees can make informed decisions and can coordinate clearance with Nextel.

3. Lack of Adequate Financial Data

Lastly, we turn to the lack of any financial data in Nextel’s current relocation plan. While it is understandable that Nextel may not wish to publish specific cost estimates for relocating particular markets or facilities in advance of negotiating with BAS licensees, data on Nextel’s actual relocation expenses should be regularly submitted in arrears to the FCC and 2 GHz MSS licensees. This is essential for TMI’s own business planning, both to assess the estimated contribution burden it may incur if it enters the market prior to completion of the 800 MHz reconfiguration process, and to gauge the up front costs it will incur if it involuntarily relocates a BAS facility prior to the end of Stage 2.

The *R&O* already requires Nextel to maintain “accurate records” of labor and material expenditures incurred in relocating BAS facilities and to conduct an independent annual audit of expenses.²⁷ Nextel also is required to provide annual progress reports in March 2006 and March

²⁶ 2 GHz MSS Second Report and Order, ¶ 40.

²⁷ See *R&O*, ¶ 350.

2007, although the contents of these reports currently is not specified.²⁸ Based on these existing obligations, it is not unreasonable also to require Nextel to report quarterly, 30 days in arrears, on its actual relocation expense, and to include aggregated data in the annual reports that are already mandated.²⁹ The quarterly reports should start in October 2005.

We note that the 800 MHz band TA is required to provide quarterly expense reports to the FCC in form and substance satisfactory to the Commission. There is no TA for the BAS relocation process, however, so quarterly expense information needs to come directly from Nextel, so that it can be reviewed by the FCC and by the 2 GHz MSS licensees that are most directly affected. As a first step, the FCC should direct Nextel to furnish the additional baseline information on its relocation plan identified by TMI. Thereafter, Nextel also should be required to file quarterly progress reports containing the information described above in a form that is acceptable to the Commission.³⁰

²⁸ *Id.* ¶ 254.

²⁹ *Id.* ¶ 349.

³⁰ The *R&O* (at ¶ 346) preserves the FCC's right to adopt "such other conditions on [Nextel's 1.9 GHz licenses] as the Commission may, at its discretion, deem necessary to ensure . . . timely clearance of the 1.9 GHz band."

III. CONCLUSION

For all of the reasons stated above, the Commission should direct Nextel to: (1) file an augmented BAS relocation plan within 45 days that includes the market-by-market timing and facilities data described herein; (2) upon request, share its BAS relocation database with eligible 2 GHz licensees, subject to appropriate confidentiality provisions; and (3) file quarterly progress reports, beginning in October 2005, containing market-by-market status information (based on Nextel's nine-step band clearance process) as well as the financial data detailed herein.

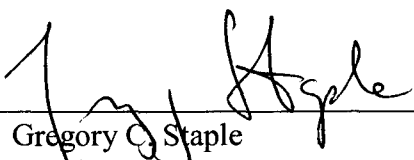
Respectfully submitted,

TMI COMMUNICATIONS AND COMPANY,
LIMITED PARTNERSHIP

and

TERRESTAR NETWORKS INC.

By: _____


Gregory C. Staple
R. Edward Price
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 639-6500

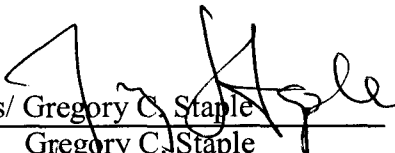
Their Attorneys

May 6, 2005

CERTIFICATION OF SERVICE

I, Gregory C. Staple, do hereby certify that I have this 6th day of May, 2005, sent by the United States First Class Mail, postage prepaid, copies of the foregoing *COMMENTS OF TMI AND TERRESTAR ON NEXTEL BAS RELOCATION AND IMPLEMENTATION PLAN*, to the following parties:

Robert S. Foosaner
Lawrence R. Krevor
James B. Goldstein
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191



/s/ Gregory C. Staple
Gregory C. Staple